

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF PUERTO RICO**

3 ELBA DE LOS A. VALLES-PEREZ

4 Plaintiff

5 v.

CIVIL NO. 03-1011 (SEC)

6 FRANK ZORRILLA MALDONADO,
7 et. al.

8 Defendants

9 **AMENDED REPORT AND RECOMMENDATION**

10 The Court ordered defendant Zorrilla Maldonado to state why the Report and
11 Recommendation issued on October 26, 2004 (Docket No. 78) should not be vacated, and
12 defendant's motion to dismiss (Docket No. 70) be denied. See Order of November 15, 2004 (Docket
13 No. 80). Defendant, however, has failed to do so.

14 Given the above, in addition to a careful re-examination of the serving papers to defendant
15 Zorrilla (reprinted at Docket No. 79), the Court hereby **VACATES** its earlier Report and
16 Recommendation to the effect that defendant's motion to dismiss (Docket No. 70) be granted.

17 Further, the Court hereby **RECOMMENDS** that the motion to dismiss (Docket No. 70) be
18 **DENIED**, as it is clear that defendant Zorrilla was properly served in his personal capacity. See
19 Docket No. 79 at pages 3 and 4. More so, defendant Zorrilla does not convincingly claim that he
20 was not served personally. See Trustees of Local Union No. 727 Pension Fund v. Perfect Parking,
21 Inc., 126 F.R.d. 48, 52 (N.D. Ill. 1989). In addition, the process server has filed a statement under
22 penalty of perjury to the effect that he personally served Zorrilla. See Docket No. 79, Exhibit 2.

23 Under the provisions of Rule 72(d), Local Rules, District of Puerto Rico, any party who
24 objects to this report and recommendation must file a written objection thereto with the Clerk of the
25 Court within ten (10) days of the party's receipt of this report and recommendation. The written
26 objections must specifically identify the portion of the recommendation, or report to which objection
27 is made and the basis for such objections. Failure to comply with this rule precludes further
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1 **CASE NO. 03-1011 (SEC)**

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3 appellate review. See Thomas v. Arn, 474 U.S. 140, 155 (1985), reh'g denied, 474 U.S. 1111(1986);
4 Davet v. Maccorone, 973 F.2d 22, 30-31 (1st Cir. 1992).

5 **SO RECOMMENDED.**

6 In San Juan, Puerto Rico, this 1st day of December, 2004.
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8 *St Gustavo A. Gelpi*

9 **GUSTAVO A. GELPI**
10 United States Magistrate-Judge
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